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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,182	10/28/2003	Volker Kronseder	30071/32009A	4300
4743	7590	03/25/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/695,182	KRONSEDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robin A. Hylton	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 07 February 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1,4-13,23,25-30 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-13,23,25-30 and 34-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-2-04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of restriction requirement in the reply filed on February 7, 2005 is acknowledged.

***Specification***

2. The abstract of the disclosure is objected to because it contains "the invention relates to". Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: the current status of the parent application has been supplied. Appropriate correction is required.

***Claim Objections***

4. Claims 4-13,25-30 and 34-38 objected to because of the following informalities: the claims are not written as complete sentences as required. "The" should be inserted at the beginning of each dependent claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations of claim 37 are redundant recitations of claim 28 and do not further limit the claimed structure.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1 and 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deline (US 4,708,257) in view of Bruun (DE 3 58 903).

Deline teaches a thin, aluminum foil cover of about 0.01 to about 0.5 mm thick and having an adhesive on one side and secured to a beverage can. Deline is silent regarding a embossing of the foil.

Bruun teaches it is known to provide embossing on an aluminum foil cover for a beverage container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of any kind of embossing, including vermicular embossing, to the aluminum protective cover of Deline. Doing so provides a more aesthetical cover and product and/or manufacturing information to the consumer.

Regarding the thickness of the material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select any value for the thin protective cover, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

8. Claims 1,4-7,9-11,23,27-27,30,34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labb   (US 5,647,497) in view of Bruun.

Labb   teaches a thin, aluminum foil cover having an adhesive on one side and secured to a beverage can (see col. 4, lines 23-25). Dangher is silent regarding a thickness of the foil and embossing of the foil.

Bruun teaches it is known to provide embossing on an aluminum foil cover for a beverage container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of any kind of embossing, including vermicular embossing, to the

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aluminum protective cover of Labb . Doing so provides a more aesthetical cover and product and/or manufacturing information to the consumer.

Regarding the thickness of the material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select any value for the thin protective cover, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding the adhesive, Labb  teaches at column 4, lines 40-42 that any known adhesive can be utilized to secure the cover to the can end. Thus, heat-activated adhesive can be used for securing the cover to the can end.

9. Claims 1,4-13,23, 25-30,34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groppi (US 6,336,309) in view of Bruun and Preisinger (DE 200 03 282).

Groppi teaches the claimed can except for the cover being formed of embossed aluminum, the thickness of the foil, adhesive for securing the cover to the can end and a polygonal shape and pull tab.

Preisinger teaches it is known to form a can cover of plastic, aluminum, or a composite material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cover of Groppi of aluminum as taught by Preisinger. Doing so is an obvious matter of design choice to provide a cover of a known alternative material.

Bruun teaches a protective cover of embossed aluminum.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an embossed aluminum to the modified protective cover of Groppi. Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any kind of embossing, including vermicular embossing,

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to the modified aluminum protective cover of Groppi. Doing so provides a more aesthetical cover and product and/or manufacturing information to the consumer.

Regarding the thickness of the material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select any value for the thin, protective cover, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding adhesive for attaching the cover to the can end, Preisinger further teaches to use adhesive for securing the cover to the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply an adhesive to the modified cover of Groppi. Doing so ensures the cover is not accidentally removed from the can end prior to the desired use.

Regarding the type of adhesive used to secure the cover to the can end, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use heat activated adhesive since the examiner takes Official Notice of the equivalence of heat activated adhesive and pressure activated adhesive for their use in the container art and the selection of any of these known equivalents to securing a cover to a container would be within the level of ordinary skill in the art.

Regarding the pattern of adhesive application, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the adhesive in any desired pattern or on any area of the cover or can end as is necessary to secure the cover to the can end.

Regarding the location of the adhesive, the final product of a can end having a cover thereover does not require the specifics of locating the adhesive for the claimed final product. See MPEP 2113 regarding product-by-process claims.

Regarding a pull tab, Preisinger further teaches a pull tab for removing a cover from a can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply a pull tab to the modified cover of Groppi. Doing so allows for easier removal of the cover at the desired time.

Regarding the polygonal shape of the cover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cover of a polygonal shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reid et al teaches a cover for a can, bottle and jar. Weitzen et al teaches an embossed metal cover. Mueller teaches a cover for a container having a polygonal shape.
11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.
12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below.

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature \_\_\_\_\_

Date \_\_\_\_\_

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
March 15, 2005



Robin A. Hylton  
Primary Examiner  
GAU 3727